

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LARRY ARNOLD YOUNG,

Petitioner,

v.

Civil Action No. 5:08CV74
(STAMP)

D. THOMPSON, C.O. DURANKO
and LT. SHAW,

Respondents.

**ORDER AFFIRMING AND ADOPTING REPORT
AND RECOMMENDATION OF MAGISTRATE JUDGE**

On March 19, 2008, the petitioner filed a petition under 28 U.S.C. § 2241 for a writ of habeas corpus. The petitioner does not challenge the execution of his sentence. Rather, the petitioner seeks release from administrative segregation and an injunction to stop alleged harassment against him at his place of incarceration. The petition was referred to United States Magistrate Judge John S. Kaull for an initial review and submission of proposed findings of fact and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09.

Magistrate Judge Kaull issued a report and recommendation recommending that petitioner's § 2241 petition be denied and dismissed without prejudice. The magistrate judge informed the petitioner that if he objected to any portion of the report, he must file written objections within ten days after being served with copies of the report. To date, no objections have been filed.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Thus, the report and recommendation of the magistrate judge in this case will be reviewed for clear error.

The magistrate judge found that the petitioner's claims regarding the conditions of his confinement are not cognizable under 28 U.S.C. § 2241. See Preiser v. Rodriguez, 411 U.S. 475, 499 (1973) ("a § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody."). The magistrate judge concluded that the petitioner's claims should have been raised in a civil rights complaint rather than a petition for writ of habeas corpus. This Court finds no clear error in the recommendation of the magistrate judge that the petitioner's petition for writ of habeas corpus should be denied and dismissed without prejudice because a petition pursuant to § 2241 is not the proper avenue for challenging the conditions of confinement.

This Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. The petitioner's § 2241 petition is DENIED and DISMISSED WITHOUT PREJUDICE. Accordingly,

this civil action is DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit copies of this order to the petitioner and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: May 19, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE